

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on February 17, 1999 at 8:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)  
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 436, 2/12/1999  
SB 437, 2/12/1999  
SB 406, 2/12/1999  
HB 211, 2/12/1999  
Executive Action: SB 367; SB 436  
SB 437; SB 389

**{Tape : 1; Side : A; Approx. Time Counter : 0}**

**HEARING ON SB 436**

**Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA**

**Proponents:** Jeff Goin, Coalition for Natural Health  
Dr. Nancy Aagenes, Naturopathic Physician, Helena  
Annie Utick, Citizen

**Opponents:** Mona Jamison, MT Chapter of Physical Therapy Assoc.  
Mark Staples, MT Chiropractic Assoc.  
Jerry Christian, Citizen

**Informational Testimony:** Steve Meloy, Department of Commerce

**Opening Statement by Sponsor:**

**SEN. MIKE HALLIGAN, SD 34, MISSOULA.** Years ago I carried a bill to license the naturopaths and at that time we talked about who we might be leaving out. Natural health is smart medicine and more and more traditional physicians are trying to get some additional training in nutrition and other aspects of health medicine. This bill is trying to add some credibility to a group that will not be a part of the original act; in fact, you will notice the bill is all new sections of law. These people will not be naturopathic doctors, but consultants with standards that will be developed. The definition of natural health care isn't trying to infringe on anyone's turf. This bill, along with the registration process as well as the disclosure, will carve out the particular area these natural health practitioners will be part of. They don't want to receive Medicaid or other government reimbursements so there's no attempt to impinge on the turf of that entire group. There's a registration fee associated with the registration of the natural health consultants. Natural health medicine is always cost effective and preventative -- with the strides being made with the natural health remedies, more and more people are looking toward these remedies.

**Proponents' Testimony:**

**Jeff Goin, Coalition for Natural Health, Missoula.** He read his written testimony **EXHIBIT (bus39a01)**.

**{Tape : 1; Side : A; Approx. Time Counter : 7.6}**

**Dr. Nancy Aagenes, Naturopathic Physician and Acupuncturist.** She read her written testimony **EXHIBIT (bus39a02)**

**Annie Utick, Private Citizen.** I feel this bill is necessary for the public because they need to be informed of the rigorous credentialing required of a person who calls himself a natural healer, which is how the public views naturopathic physicians. My degree is not from a residential school so I can't offer my services to the public at this time; with this bill I would be

able to. There are a lot of people, like me, who have something to offer the public but they can't do it under current Montana law.

**Opponents' Testimony:**

**Mona Jamison, Montana Chapter of the American Physical Therapy Association.** We oppose this bill because we feel it's not necessary since we are licensed, as are other professions and occupations in Montana, under Title 37. The purpose for licensure and registration with a few professions, is to protect the public health, safety and welfare. The registration this bill addresses would do nothing to protect that. I don't see any dishonesty in the way the people in the stores sell or market the various food sources. If you go through this bill and compare it to other statutes in Title 37, there's a lot missing, i.e. what are the standards for this profession? It appears this bill is just trying to set up a registration process. Without the registration process, folks can and should be able to sell the supplements, etc.; however, they can't say they're a naturopathic physician. Besides there being no standards, there is no board that has the authority to adopt standards to implement any section of this act. I have a problem with the word "sound" on Page 1 because physical therapists practice ultrasound, which requires high intensity heat; if done incorrectly, internal tissue will be burned. Even if this bill moves forward, I would suggest some of the words or elements in the definition of "natural health care" are still very broad as a registration act. I think if the natural health care folks are careful in the public services they provide, they don't need to worry about decriminalization -- that only happens when you practice something you're not authorized to do. We don't feel this bill is necessary.

**{Tape : 1; Side : A; Approx. Time Counter : 16.4}**

**Mark Staples, Montana Chiropractic Association.** We really don't have a lot of concerns, though I echo **Ms. Jamison's** sentiments. I too share the concern of "sound" -- if it's music, that's fine; however, if it's ultrasound that is a concern because the professions that use undergo intense training in order to be able to use it. I agree with the testimony that duration and intensity are important and I would add placement also.

**Jerry Christison, Private Citizen, Helena.** It looks like **SB 436** and **SB 437** will impose a new tax on an estimated 100,000+ people in Montana that dream of being self-employed. We know that many of the working people need a second job and many have chosen the multi-level marketing to supplement their income. I think these

bills will make a person who finds a product or service and shares the information with a friend, register and pay \$100 tax. The Senate has already considered a bill to regulate multi-level businesses and I support that bill; however, I think these bills will kill the dream for those 100,000+ people who want to share those natural products with friends and neighbors. I ask you to oppose this bill. I have two letters I would like to share with the Committee **EXHIBIT (bus39a03)** and **EXHIBIT (bus39a04)**.

**Informational Testimony:**

**Steve Meloy, Department of Commerce.** Ours is the division to which this program would come if passed and signed by the Governor. I would be happy to answer any questions about the applicability of this program to our division.

**Questions from Committee Members and Responses:**

**SEN. VICKI COCCHIARELLA** asked who would have to register. **Jeff Goin** said this bill is not intended to include people who work in the nutrition section of grocery stores or private vitamin companies (Shaklee, etc.); however, this bill is intended to create a commercial right to exist for natural health consultants and natural health practitioners. Part of their scope of practice will involve recommending vitamin and herbal supplements, enzymes, etc., but many other types of natural health therapy are included.

**SEN. COCCHIARELLA** asked for a definition of "sound." **Mr. Goin** said they didn't intend the word to connote ultrasound or be a derivation of it; rather, it should be a viable, grounded or effective techniques.

***{Tape : 1; Side : A; Approx. Time Counter : 24.5}***

**SEN. DALE BERRY** asked if he himself could register in this category for \$100. **Jeff Goin** said he could.

**SEN. BERRY** asked if the bill didn't pass and these people practiced as they're proposing to do if they were registered, was there violation or something that would prevent them from practicing. **Steve Meloy** said if there was no established scope of practice in law, there would be no such thing as unlicensed practice.

**SEN. BEA MCCARTHY** said she was disturbed by the "18 years of age" and explained she didn't think our high school curricula taught naturopathic philosophy that was being espoused. She asked if there was language which would make her more comfortable with "18

years of age." **Jeff Goin** said that language was intended to address young people who had been learning natural health techniques and modalities throughout their life, i.e. people who trained under the supervision of the tribal healer. They would be amenable to changing the age from 18 to 21.

**SEN. FRED THOMAS** referred to the question of people who sell these things and wondered if the exemptions in Section 6 would remove the problem. **SEN. HALLIGAN** said the intent was to provide that exclusion.

**SEN. MIKE SPRAGUE** asked the sponsor if he had a problem with raising the age from 18 to 21 or 25 and was he told didn't think 18-year-olds could be excluded; rather, their entrepreneurship should be encouraged.

**SEN. SPRAGUE** said he had no problem with naturopathic because medical doctors had no education in that practice. He said he saw some potential mischief with an 18-year-old gathering 14-, 15- or 16-year-olds around him and becoming the local guru. He felt nutritional schooling should be involved because supplementation or vitamin therapy needed some experience and relativity. **SEN. HALLIGAN** said if mischief was a person's intent, it wouldn't matter what age the person was.

**SEN. SPRAGUE** commented peyote was a naturally formed situation and wondered if it could be prescribed even though it had hallucinatory properties. **Jeff Goin** said he wasn't an expert but he supposed the prescription of those drugs would be illegal for a natural health practitioner or consultant to prescribe, just as they were for any citizen.

**SEN. COCCHIARELLA** asked if these people had an association to which to belong. **Jeff Goin** said he represented the Coalition for Natural Health but they didn't have a Montana-based association.

**SEN. COCCHIARELLA** if other boards or registrations had an age restriction. **Steve Meloy** said most had a minority age of 18 except some of the trades.

**SEN. COCCHIARELLA** asked if the bill gave the Department the authority to regulate anything. **Steve Meloy** said this program came to them without a board. There were currently four and this would be the fifth. He said the Department administered them with the help of Advisory Councils made up of the industry itself; however, this bill brought unprofessional conduct to them and if there was a complaint against one of the registered individuals, they would have the authority to pursue some sort of disciplinary action against that unprofessional conduct.

**SEN. COCCHIARELLA** asked what the Department could do with someone who was practicing but not registered and was told by **Mr. Meloy** it would be hard to pursue unlicensed practice against them because there was no clearly defined scope of practice in the bill. They probably would have to say it was the legislature's intent that they be registered for what they were doing.

**SEN. SPRAGUE** asked if a chiropractor needed nutritional supplemental education. **Mark Staples** said they studied those fields in the curriculum; however, that training wasn't needed in order to advise people. He suggested the difference between those who were recommending and those who were prescribing was not a technical difference.

**Closing by Sponsor:**

**SEN. MIKE HALLIGAN.** This bill is not attempting to tax anybody who is beyond the scope of this bill; rather, it's a pro-business bill. A big portion of this bill defines what these people are not; rather, it's trying to stay in that natural health arena. Hopefully, people will go to individuals with experience. If you feel you have to provide a scope of practice definition or if you want to establish some credentialing, we could take a look at that. We can carve out an area for these people to practice without impinging on other turf.

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**HEARING ON SB 437**

**Sponsor:** SEN. MIKE HALLIGAN, SD 34, MISSOULA

**Proponents:** None

**Opponents:** None

**Opening and Closing Statement by Sponsor:**

**SEN. MIKE HALLIGAN, SD 34, MISSOULA.** This is a companion bill to SB 436 that simply puts \$100 registration fee on the ballot because of CI-75.

**HEARING ON SB 406**

**Sponsor:** SEN. STEVE DOHERTY, SD 24, GREAT FALLS

**Proponents:** Bob Anderson, Public Service Commission

**Bill K. Drummond, Western MT Electric Generating  
& Transmission Cooperative, Inc., WMG&T  
Debbie Smith, Natural Resources Defense Council  
Jack Haffey, Montana Power Co.  
John Hines, Governor's Office  
Jeff Barber, MT Environmental Information Center**

**Opponents: None**

**Opening Statement by Sponsor:**

**SEN. STEVE DOHERTY, SD 24, GREAT FALLS.** This bill deals with utility deregulation because we need to plan for the competitive environment the legislature and Governor thought we'd have when SB 390 was passed last session. **Senate Bill 406** approaches the issue of what happens to the small customers and what can be done for them to ensure reliable, efficient energy supplies at a reasonable price in two ways: buying cooperatives and default suppliers.

A buying cooperative would be able to go into the wholesale market to buy and sell electricity, almost like a commodities trader. A section of the bill also allows them to sell the electricity to someone else if it's not consumed by their members.

A default supplier would be determined by the Public Service Commission and is the backstop. Who is going to supply the small consumers because they're scattered all over Montana and have small loads. This bill would allow a buying co-op to be set up who would become the default supplier. Why is that a good or bad idea? It's a matter of public policy to try to complement the competitive nature of SB 390. One default supplier will be one regulated entity, less workload for the Commission and the ability to aggregate customers in order to get a competitive price from anybody who wants to sell electricity. There will be many customers who will not be attractive when competition happens in 2004.

The reason for the length of the bill is a new buying cooperative is being set up and most of the pages deal with that. The meat of the bill is Page 26, Section 37, which says a person may submit an application and the bill deals with a buying co-op being a person who could submit a license to the PSC to be the default supplier and the Commission would have to make the call as to who would be that default supplier.

**Proponents' Testimony:**

**Bob Anderson, Public Service Commission.** I'm here to represent the Commission's view and am a proponent of the bill because of the twin goals of the implementation of SB 390. One is concerned with protection. If SB 390 isn't fulfilled by the deadline, customers could be in a tough spot of not having a supplier. The default provision of **SB 406** would provide that. The other goal is competition and both goals are compatible in **SB 406**. The Commission would have the obligation of choosing the default supplier and would determine the price, a key provision of the bill. I would like to submit an amendment **EXHIBIT (bus39a05)** to **Page 19, Section 31, Lines 27-28**, so the co-op wouldn't be exempt from the PSC and Consumer Counsel Tax because other providers aren't exempt and the PSC depends on the tax in order to pay its budget.

*{Tape : 1; Side : B; Approx. Time Counter : 8}*

**Bill K. Drummond, Western Montana Electric Generating and Transmission Cooperative.** He read his written testimony **EXHIBIT (bus39a06)**.

**Debbie Smith, Natural Resources Defense Council.** I'm pleased to support the bill and agree with the testimony that's already been given. The parties are still working together to fine-tune the bill and make it even better -- we hope to have additional language to the Committee by the end of the day. Sections 1-32 of the bill are concerned with setting up the buying co-op, but the meat of the bill is on the last two pages. The reason for establishing buying cooperatives is to maximize the chances that small customers would be better off than not from utility deregulation restructuring. The legislature needs to give small customers the tools they need in order to compete in a restructured world. It is possible that through a buying cooperative entity, the small customers of Montana Power could be better off, which would mean the state would be better off. This bill potentially allows Montana to get more use from the Columbia River Basin at the best price and that's why we're authorizing the formation of these buying co-ops. It doesn't mean the co-op is the "shoe-in" for the default supplier, nor does it mean that co-op would necessarily have any price advantages over a for-profit corporation that may own its own plant. **Senate Bill 406** does nothing to change the date by which retail competition has to be fully available to all small customers; rather, it deals with the situation that if there are no competitors who want to compete for this supply on an individual residence-by-residence or main street business-by-business. This is a good bill which



has a lot of support. I would urge your favorable consideration. I have copies of the summations of the bill draft for each Committee member **EXHIBIT (bus39a07)**.

**{Tape : 1; Side : B; Approx. Time Counter : 18.2}**

**Jack Haffey, Montana Power Company.** I speak in support of **SB 406**. It was anticipated when SB 390 passed, there would be a need for a bridge to bring the benefits of competition to small customers because not all licensed suppliers are going to see a desirable market for the small customers. But competition is working because 17% of our electric market has already chosen an alternative supplier; however, the small, small residential and commercial customers are going to need access to the benefits of competition. This bill offers a system-wide default supplier vehicle which would be legitimate; the amendments would ensure the public interest was well served. All of us want a robust competitive supply market. Other states have experienced the same kind of need for a bridge that we're experiencing but haven't come up with the idea that's been presented today. Montana Power Company supports **SB 406** with the amendments we've agreed on **EXHIBIT (bus39a08)**.

**John Hines, Governor's Office.** We support the bill. We approached the negotiations from a different perspective. We tried to ensure that what we did to protect consumers, didn't in some way create problems in the development of a future market. This bill reflects those concerns were taken care of. Section 6 limits the activities of a co-op which is serving as a default provider. A feature of the bill is the default provider is required to serve all customers who apply to it, i.e. the provider can't pick and choose only those customers who are the most profitable. This default provider concept is a special responsibility which will be granted someone; they're there as the backstop to ensure the small consumers receive electricity. However, with the responsibility comes the need for oversight and this bill requires whoever is chosen is under the PSC.

**Jeff Barber, Montana Environmental Information Center.** This is a consensus bill and contains compromises, some of which we don't particularly like; however, we support it. Protecting the small customers was the most important issue and was too important to fight over what the co-op would look like. It creates a process for establishing a co-op and default supplier and we think it gives the small customers the best opportunity to ensure they will receive power at a decent price if the provision of SB 390 isn't completely fulfilled or take a little longer than originally anticipated. I hope you'll give the bill a DO PASS.

**Opponents' Testimony:** None.

***{Tape : 1; Side : B; Approx. Time Counter : 25.6}***

**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** asked if Montana Power was currently a singular default provider. **Jack Haffey** said the Commission would designate an entity to be the default supplier; in fact, there was a docket in front of the Commission where MPC submitted their proposal for acting out SB 390's customer choice obligations and opportunities. The docket contained two proposals: (1) have MPC be the default supplier; (2) have those who have not yet chosen by the end of the transition period be allocated to all the licensed suppliers who were providing electricity at that time. They were willing to be the default supplier for those who haven't chosen, but we think this bill offers legitimate alternative means through which benefits got system-wide to all customers connected to our system who didn't choose. "Supplier" was singular.

**SEN. SPRAGUE** said **Jack Haffey's** testimony said if the default supplier had a problem, MPC would jump back in but there would be some costs to readjust. **Jack Haffey** said the reason they said it should be the public interest's goal is the benefits of the competitive market place got to all customers, small and large. If that default supplier for some reason was unable to continue on into the future, there needed to be someone the Commission designated if there were still those who had not chosen their own supplier. It's common sense MPC would be the one the Commission would designate; however, there needed to be some transition.

**SEN. SPRAGUE** referred to **Page 19, Lines 26-27**, and said currently MPC paid an income tax. **Mr. Haffey** said they did; however, the public interest goal of getting benefits of the competitive market place to the small customers, knowing that it might be a challenge, necessitated the tax exemption as a condition, i.e. it was a public interest condition.

**SEN. SPRAGUE** asked if the status was to be tax exempt, why it wouldn't be a benefit to have more suppliers. **Jack Haffey** said the more default suppliers there were, the less likely that there would be equitable access to benefits of the competitive marketplace for those customers who chose not to choose. There should be a goal equitable access through one entity, which was exactly what MPC would be if they were designated by the PSC as the default supplier. An equitable system could be best obtained through a one-system default supplier. If they got away from

that, some would get a better deal than others from another default supplier.

**{Tape : 1; Side : B; Approx. Time Counter : 34.1}**

**SEN. JOHN HERTEL** asked the same question of **Bill Drummond** and was told the market to be pursued was small, residential and commercial customers who don't have an alternative supply. How was it possible to minimize the cost of electricity to those customers and yet be able to spread the benefits to them? He believed having a single supplier with only one set of overheads, etc. and to be able to aggregate as many customers together as possible to get the lowest possible price to provide service in the market made the most sense.

**SEN. HERTEL** referred to **Section 6** which limited the use to less than 100 kilowatts and asked about the business starting up which used more than that but had no other default supplier. **Mr. Drummond** said the theory was if customers were of a sufficient size, they would be attractive for suppliers to try and market to. It was his experience if customers were 100 KW or above, they were attractive in and of themselves or were able to aggregate together with other customers.

**SEN. HERTEL** asked if they would be back in two years to ask for permission to serve customers with bigger usage. **Bill Drummond** said the default supplier could function very well with customers of 100 KW or less. However, if it were the preference of the legislature to increase that number, that would benefit the small customer because they would have more attractive consumers as part of their customer phase.

**SEN. SPRAGUE** asked if there was any wisdom for a municipality to pool its buying power as a default provider for citizens who didn't choose another alternative source. **Bill Drummond** said he had worked for cities and towns who provided electricity for their inhabitants; certainly there are many examples of effective services provided in this way. However, the difference was where this was done, the electricity was provided to all customers: commercial, residential or industrial. In the case of this bill, the market was being specifically limited so as not to prevent the default supplier from overwhelming any other competition in the state. When customer size was limited to 100 KW it would be very difficult to efficiently and economically provide that electric service if it was done on a series of small increments.

**{Tape : 2; Side : A; Approx. Time Counter : 0}**

**Closing by Sponsor:**

**SEN. STEVE DOHERTY.** We need to provide a bridge under SB 390 to give those unwanted customers an opportunity to share the benefit of a competitive market. Under SB 390 the power company's obligation to become the default supplier ends in 2004 and if we don't pass this bill there is no backstop. If this idea falls flat on its face in 2004 and MPC is the final backstop because we're pulling them back in, they should be entitled to some cost adjustments. That doesn't defeat the purpose of the bill. This bill has been called a bridge; however, it's also a teeter-totter because we're trying to balance consumer protection with the competitive market, two ideas that are almost opposites. The PSC in the regulated world provided consumer protection; however, in the competitive market, the entities with a large load may be able to negotiate with the power supplier to get a good rate. Those of us who are small customers won't be able to negotiate very effectively because we aren't lumped together. We need to get together and form ourselves into a buying co-op, which would allow the opportunity to go after being the default supplier. Others could compete with the co-op but the PSC will have to make the call as to who the default supplier would be. The Bonneville Power Administration has cheap power and there is an opportunity for a buying co-op to qualify for power. If that happens in a competitive way, we can get the cheaper power and meld it with the other power in the market. That will mean cheaper prices for Montana. This bill is a balanced bridge to make that happen. I urge you to adopt **SB 406**.

*{Tape : 2; Side : A; Approx. Time Counter : 4.1}*

**HEARING ON HB 211**

**Sponsor:** REP. ROYAL JOHNSON, HD 10, BILLINGS

**Proponents:** Bob Anderson, Public Service Commission  
Alec Hanson, MT League of Cities & Towns  
Greg Groepper, City of Helena

**Opponents:** None

**Informational Testimony:** Jack Haffey, Montana Power Co.  
Bill Drummond, Western MT Electric  
Generating & Transmission  
Cooperative, Inc., WMG&T

**Opening Statement by Sponsor:**

**REP. ROYAL JOHNSON, HD 10, BILLINGS.** This bill is different from SB 406. A part of SB 390 required the PSC to set up rules, regulations, etc., for the transition. It said they didn't see

anything in the way of a default provider and since cities, counties, etc., provide other services, we wondered why they couldn't have an opportunity to deliver electricity if you choose not to buy it from somebody else, i.e. be the default provider. When I presented this bill in the House there was not one person against it. It's the responsibility of the entire PSC to set rules and regulations. This bill asks for is for an opportunity for cities, counties or consolidated governments to make application for being the default provider. We don't want to be exclusive or eliminate anybody. The lines through which this electricity will come are there now and I can decide who that provider will be. But in case I don't want to make that choice, the city can say they want that person to have a choice. This bill provides that any of you who want to be a default provider can qualify.

**Proponents' Testimony:**

**Bob Anderson, Public Service Commission.** The Commission believes in the concept of a default supplier and trying to balance consumer protection and competition. **House Bill 211** takes a big step in addressing the need of a default supplier. The Commission has a long history of having authority challenged. The Courts have spoken on that many times. It's our opinion we need the underlying statutory authority to do whatever we do and we don't believe **HB 211**, as presently written, adequately provides that statutory foundation. Senate Bill 406 provides a good definition of a default supplier and if that part was put into **HB 211**, it would be a complete bill. It would give us the authority to do what **Rep. Johnson** would like us to do.

**{Tape : 2; Side : A; Approx. Time Counter : 12.4}**

**Alec Hanson, Montana League of Cities and Towns.** We support **HB 211**. This bill passed the House with more than 80 votes. With the agreement of the sponsor, we'd consider the suggestions by **Commissioner Anderson** regarding the authority of the PSC. The key issue between these two bills is SB 406 has reference to one supplier, which would pre-empt municipal governments from serving as default suppliers. We've been working for almost a year to put together an energy supply program for municipal governments across Montana and as of today, we have 36 cities and towns signed up representing a load of about 60 million kilowatt hours. Our intent is to go to the open market as early as next week to see if we can get a price for our own municipal facilities that is lower than the regulated price being charged by the Montana

Power Company. We think we can and, for every mill we save on the price of electricity, we will save cities and towns \$60,000. I think it's important to note we have some experience in the utility business through the League of Cities and Towns. We are gearing up to go, when and if it becomes necessary, for cities and towns to become default suppliers. We have 100 years of experience in utilities business in cities and towns and have an attractive load profile that, if combined with residential and commercial, could lead to lower prices. We also have an established management structure. If you have a problem, you know the people in those cities and towns and you can go to them. The key issue in dealing with these two bills is, will there be one default supplier or will there be several. The problem with one default supplier means cities and towns can't serve the entire Montana Power distribution area because if cities and towns sell energy out in the country, they might run into some of the jurisdictional arguments. We can serve people in cities and towns efficiently, effectively and fairly, i.e. get them a better price than they can get anywhere else, which was what deregulation was all about.

We don't really want to be the default supplier; what we want is to be in a position, under the deregulated market, to take advantage of everything and go to the open market and capture the best price for the Montana consumer. I hope you can support HB **211**.

**Greg Groepper, City of Helena.** The City of Helena Commission is unanimously behind **SB 211** because of our being involved in the gas and electric utility business due to the uncertainty our residents were facing because of deregulation. We did this for two reasons: (1) After 2004, Montana Power said they didn't want to provide electricity, though they now said they would be willing to be a default provider; (2) No other companies have come forward to offer to provide electricity for our residential customers. Therefore, we formed the first municipality utility without wires, which is not the co-op or a public utility. The reason we're interested in being considered to become a default provider happens when local citizens have a problem. They call the city; therefore, we're trying to position ourselves to sell utilities to our residents at a cheap price. In 2004, we'll see people who didn't pay attention or didn't want to choose, which will mean someone else will have to make the decision for them. We think we're in the best position to make that decision for them to get the lowest rates and guarantee that they'll be taken care of. That is the city's or town's job, like garbage collection, sewer, fixing streets, snow removal, etc.

There will be multiple default suppliers because Montana Power doesn't serve the entire state of Montana with electricity. The

bill is asking for us to be able to have an opportunity to be one of those multiple default suppliers. We would encourage your support of **HB 211** but have no position on HB 406.

**Opponents' Testimony:** None.

**Informational Testimony:**

**Jack Haffey, Montana Power Company (MPC).** Montana Power Company supported **HB 211** in the House. What we really supported was the concept there needed to be a means through which small consumers receive benefits from the competitive market place. At the start, the supply market will want to be licensed through the Commission; however, there aren't many electricity suppliers who are yet wanting to be licensed for the small consumers. That will happen in the future. We have concluded the system-wide default supplier approach is the most equitable way, through a public policy vehicle, to bring those benefits to people who do not choose. It is important to appreciate a municipality, League of Cities and Towns, or a buying cooperative could be designated a system-wide default supplier. They need to apply. However, the best way to get the benefits of a competitive marketplace equitably distributed to all small consumers who don't choose, is through a system-wide default supplier. All those who are connected to our system should have equitable access to the competitive marketplace; there are problems of achieving that public policy goal in **HB 211**. The good things of **HB 211** can be achieved through provisions in SB 406, and I wanted to ensure that information was as clearly in your mind as I could explain it.

***{Tape : 2; Side : A; Approx. Time Counter : 24.3}***

**Bill Drummond, Western Montana Electric Generating Transmission Cooperative.** Cities and Towns went out for bid several months ago to look at the electric market and to find out what power supply prices they could get. Nothing prevents them from doing that. Also, they are not prevented from going out and providing a competitive supply to residential and small commercial customers. The real question faced in this single vs. multiple default supplier is how do you maximize the benefits for all the default customers across Montana, as opposed to having individual pockets of folks who by their geographic circumstance have access to a particularly cheap source of supply as default customers, while others may not have that access. That's why I support the idea of a single default supplier.

**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** asked if in the 1930's, cities weren't public utilities suppliers. **Alec Hanson** said there were several cities which had utilities operations.

**SEN. SPRAGUE** asked if Cities and Towns could sell their buying power to their residents. **Mr. Hanson** said he thought they could, though they had never tried that. He said they were working on a supply program just for municipal energy needs. They'd also done some work in natural gas and were under the state contract. Ultimately, he thought they could sell electricity to general consumers. However, there would be a question as the designation of a default supplier because there was a certain amount of market predictability. People who don't go elsewhere are part of that load. Their real interest was if it became necessary they wanted to be in a position to do it.

**SEN. SPRAGUE** commented Cities and Towns have already done this and under current law, they could now supply, if they chose to be a supplier, and resell; however, they could not singly be a default provider. They would have to be part of a cooperative provider. **Alec Hanson** replied SB 406 provided that. Whoever was the default supplier would have to serve the entire Montana Power Company service area. He wasn't sure they could put enough cities, towns and counties together to get the job done, which was the crux of the problem.

**SEN. BEA MCCARTHY** referred to SB 406, Page 26, Section 37, and asked if it would be possible to amend into that section part 2 of the sponsor's definition, and if the writers of the bill would be agreeable. **REP. ROYAL JOHNSON** said he wasn't a bill drafter and wasn't sure that was possible to do. The situation was very simple: This bill was a passable sort of situation and if someone else wanted to be in it, they could. The law currently provided these kinds of things could be done over the next two years and then allowed the PSC to extend that transition period. He contended anyone who wanted to put his own bill in should do so. **House Bill 211** did what needed to be done for consumers in cities and towns. It didn't take care of everyone in the state. He was concerned that SB 406 said there would be only one default supplier of public utilities for small customers. He had never seen a time when economics would say the best deal could be gotten from one supplier. It is unknown who's going to be either your or my supplier. If you wish not to choose, some default supplier will have to take care of you. We just want to get the ball rolling so if anyone else wants to be in the business, they have the opportunity.



**{Tape : 2; Side : A; Approx. Time Counter : 35.4}**

**SEN. FRED THOMAS** asked the reason for one default supplier. **Jack Haffey** said SB 390 provided that utilities offering customer choice to their customers had to file a PSC transition plan which had to address such things as bringing benefits competition to small consumers. Therefore, MPC's system which had 285,000 electric customers needed to be considered on a system-wide basis for those customers who were default customers, those who did not chose. The way to maximize the benefits of the competitor's marketplace for those small customers was to have a system-wide default supplier designated by the PSC. The argument or statement could be made that it could be done locally through a rural electric cooperative. For example, **HB 211** would create an inequitable situation for customers who were in and around a particular city. They thought the public policy preference should be a system-wide equitable access for customers who wish not to choose.

**SEN. THOMAS** commented as long as the PSC was ensuring there was a default supplier to each citizen in the territory that was needed, the task was being accomplished. **Mr. Haffey** said the policy preference ought to be if the public interest was best served by recognizing there was a need for a default supplier as a bridge to a robust competitive future, and if the best way to serve the public interest was a system-wide default supplier for each entity, then this is a natural by-product of SB 390.

**SEN. FRED THOMAS** remarked these two bills were based on the assumption there would not be a robust market, but he thought there would be. He asked for more information on what had gone on in California.

**{Tape : 2; Side : B; Approx. Time Counter : 0}**

**John Hines, Governor's Office**, said in California all consumers were being served in part through multiple different providers. This was because their legislation mandated all existing utilities to digress a certain amount of their resources to create a buying pool. Here in Montana, most envisioned competitive services being available to consumers. That was still the case. The question was when would they trickle down to the small consumers. This was where "default" came in -- it meant consumers were assigned to a specific energy supplier; the implication was competition wasn't working so there was no choice. **House Bill 211** created an opportunity for municipalities to provide that default service but left out a huge gap of folks that weren't being served.

**SEN. THOMAS** asked if California had a rate reduction built into that legislation and **Mr. Hines** said it was a guaranteed 10%.

**SEN. THOMAS** asked if there was a difference in the utility rates charged in California. **John Hines** said he felt the reason the suppliers were leaving California was a short-term problem, i.e. when the stranded costs were paid off, the suppliers would come.

**SEN. SPRAGUE** asked if California was doing Cities and Towns grids. **Mr. Hines** said as energy suppliers, they were.

**SEN. SPRAGUE** asked if multiple suppliers was working in California and **John Hines** affirmed.

**Closing by Sponsor:**

**REP. ROYAL JOHNSON.** House Bill 211 language says places which have Montana Power lines should have the option to select another default provider. That is the way rural customers will be taken care of. Co-ops are working diligently to find a way where they can be just as competitive as they've ever been in the business in the areas they currently serve. The people left out are those who choose not to choose -- they will need default providers. Why should we reduce it to one default provider? If you want to do something with the bill, run it through the way it is and take out the line on SB 406 which says "one default provider" and let's see how many people will decide to be default. This bill provides a way for the PSC to do its job. The way this is going to work is people will say they want to be the electrical supplier and will carry the electricity over present lines rented to them by MPC. Another way of saying this is somebody could become the default provider if they could fulfill the requirements by the PSC. I'm asking you to allow anybody who wants to be a default provider the ability to make an application to the PSC -- don't put it to one person or entity.

**{Tape : 2; Side : B; Approx. Time Counter : 8.6}**

**EXECUTIVE ACTION ON SB 367**

**Motion:** **SEN. MIKE SPRAGUE** moved SB 367.

**Discussion:** **Motion:** **SEN. FRED THOMAS** moved that SB 367 BE AMENDED.

**Discussion:** **Mr. Bart Campbell, Legislative Assistant,** said the amendments **EXHIBIT** (bus39a09) were from Mona Jamison. No. 1 on

page 4, line 4, insert "approved or disapproved" for "paid". No. 2 on page 4, line, insert "and if approved, paid within 30 days after approval". That increases that total to 60 days actually. No.3 on page 4, line 9, insert "payment" for "submission" of claim. No. 4 on page 4, lines 15-18, delete Subsection (d) in its entirety and renumber subsequent subsection. No. 5 on page 4, line 21, insert "24-month" for "12-month". No. 6 on page 6, line 4-22, delete subsection (3) in its entirety.

**Substitute Motion:** SEN. THOMAS made a substitute motion that No. 3 on page 4, line 9, insert "payment" for "submission" be the only amendment to SB 367.

**Vote:** Motion that SB 367 BE AMENDED by No. 3 only carried unanimously. 7-0

**Discussion:** SEN. THOMAS said that Nos. 1 & 2 in essence put the burden on the dealer's back to carry the factory for at least 60 days. Nos. 4 & 5 deals with the good faith compliance of the factory's procedures and policies and reverses what is being done about the 12-month look back if it would be changed to 24-months on warranty work. That strikes at the heart of the bill. If there are problems, they should be dealt with as soon as possible while things are fresh in everyone's mind and people are still available and not wait two years. The longer the period of time, the better for the manufacturer.

SEN. BEA MCCARTHY asked about amendment No. 1 and 2. Steve Turkewicz, MT Autodealers Assoc., answered that 60 days would mean from the time it was sent by the dealer. Normally, this is done on a weekly basis. SEN. MCCARTHY asked that after it is sent to the manufacturer 60 days would be fine, but after it is approved how long does it take. Mr. Turkewicz said most manufacturers, except a few of the imports, pay on a weekly basis.

SEN. VICKI COCCHIARELLA asked if the manufacturer had sufficient time to make payment. Mr. Turkewicz said that this bill asks the manufacturer to pay for the parts and technician within 30 days of receipt of the bill from the dealer.

SEN. COCCHIARELLA wanted to know if this bill closes down the possibility of a person starting a franchise with the financial help of a manufacturer. Mr. Turkewicz asked the committee to look at Subsection C on page 6, line 15, this allows the factory to come in and start a dealer development program. This has been used historically for diversity purposes such as women without a lot of experience. This subsection provides, in the event of one or two people, etc., they ultimately will be the owners of the

dealership. It allows for factory participation with an individual or corporate entity who will ultimately buy out the manufacturer's investment as the entity acquires knowledge, expertise and the capital.

**Motion:** SEN. MCCARTHY moved that SB 367 DO PASS AS AMENDED. 7-0

**EXECUTIVE ACTION ON SB 436**

**Motion:** SEN. THOMAS moved that SB 436 DO PASS.

**Discussion:** SEN. BEA MCCARTHY said that in Section 3, No. 2 there appears to be no specific training required and this would be opening a market for those who have nothing more than a certificate that was purchased for a price. It is a costly measure that has to be voted on by the public. SEN. HERTEL said that it would need some standards, qualifications, etc. and it is too vague.

**Motion/Vote:** SEN. MCCARTHY moved that SB 436 BE TABLED. Motion carried unanimously. 7-0

**EXECUTIVE ACTION ON SB 437**

**Motion/Vote:** SEN. THOMAS moved that SB 437 BE TABLED. Motion carried unanimously. 7-0

**EXECUTIVE ACTION ON SB 389**

**Motion/Vote:** SEN. THOMAS moved that SB 389 BE TABLED. Motion carried 5-2 with SENATORS COCCHIARELLA AND ROUSH voting no.



**ADJOURNMENT**

Adjournment: 11:25 A.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

**EXHIBIT (bus39aad)**